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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 Sonja Marie Howell,

)

No. CV-12-1024-PHX-LOA

10 Plaintiff,

)

ORDER

11 vs.

)

12

13 Carolyn W. Colvin, Commissioner of the
Social Security Administration,

)

14 Defendant.

)

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16 Plaintiff seeks review of the Social Security Administration Commissioner’s decision
17 denying her application for disability insurance benefits and supplemental security income.
18 The parties, who have expressly consented in writing to proceed before the undersigned
19 Magistrate Judge per 28 U.S.C. § 636(c), have filed briefs in accordance with the Rules of
20 Practice (“Local Rules ” or “LRCiv”) 16.1. (Docs. 10, 14) After review of the record,
21 briefing and applicable law, the decision of the Commissioner is affirmed.

22 **I. Procedural Background**

23 In April 2008, Plaintiff filed applications for Social Security Disability Insurance
24 Benefits and Supplemental Security Income under Titles II and XVI, respectively, of the
25 Social Security Act. *See* 42 U.S.C. §§ 401-433 and §§ 1381-1383c. (AR¹ 138-152) Plaintiff

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27 ¹ Citations to “AR” are to the administrative record.

1 was 39 years old when she filed the applications and she has an eleventh grade education.
2 (AR 139, 176) Plaintiff also claims to have completed two semesters of community college
3 despite not graduating from high school. (AR 41) Plaintiff reported in the applications she
4 was rendered unable to work due to a disabling condition beginning on March 20, 2007, and
5 that she remains disabled. (AR 139, 146) Plaintiff has identified fibromyalgia, degenerative
6 disc disease, depression, asthma and migraines as the conditions that limit her ability to work.
7 (AR 51-53,164)

8 Plaintiff's applications were denied by the Social Security Administration ("SSA")
9 on August 18, 2008. (AR 74-77) Her request for reconsideration was denied on February 13,
10 2009. (AR 85-92) At Plaintiff's request, AR 94, a hearing was held on July 16, 2010, before
11 Administrative Law Judge ("ALJ") Earl C. Cates, Jr. (AR 31-69) In a decision dated August
12 16, 2010, the ALJ ruled Plaintiff is not entitled to disability benefits because she "has not
13 been under a disability within the meaning of the Social Security Act from March 20, 2007,
14 through the date of this decision." (AR 15, 15-24)

15 Plaintiff filed a Request for Review of Hearing Decision/Order on October 7, 2010.
16 (AR 10) On March 22, 2012, the Appeals Council denied Plaintiff's request for review of
17 the ALJ's decision. (AR 1-3) As a result of the denial, the ALJ's decision became the final
18 decision of the Commissioner of the SSA. (AR 1)

19 On May 16, 2012, having exhausted the administrative review process, Plaintiff
20 sought judicial review of the Commissioner's decision by filing a Complaint in this District
21 Court pursuant to 42 U.S.C. § 405(g). (Doc. 1) On October 1, 2012, Plaintiff filed an
22 Opening Brief pursuant to LRCiv 16.1, in which she seeks a remand for an award of
23 disability benefits or, alternatively, a remand for further administrative proceedings. (Doc.
24 23) On October 31, 2012, Defendant filed an Opposition to Plaintiff's Opening Brief. (Doc.
25 24) Plaintiff filed a Reply Brief on November 16, 2012. (Doc. 25)

1 **II. Applicable Legal Standards**

2 **A. Standard of Review**

3 A district court must affirm the ALJ’s findings if they are supported by substantial
4 evidence and are free from reversible error. *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir.
5 1998); *Marcia v. Sullivan*, 900 F.2d 172, 174 (9th Cir. 1990). Substantial evidence is more
6 than a scintilla, but less than a preponderance; it is “such relevant evidence as a reasonable
7 mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S.
8 389, 401 (1971); *see also Reddick*, 157 F.3d at 720. In determining whether substantial
9 evidence supports the ALJ’s decision, a district court considers the record as a whole,
10 weighing both the evidence that supports and that which detracts from the ALJ’s conclusions.
11 *Reddick*, 157 F.3d at 720; *Tylitzki v. Shalala*, 999 F.2d 1411, 1413 (9th Cir. 1993). The ALJ
12 is responsible for resolving conflicts, ambiguity, and determining credibility. *Andrews v.*
13 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
14 Cir. 1989). “If the evidence can reasonably support either affirming or reversing the
15 Secretary’s conclusion, the court may not substitute its judgment for that of the Secretary.”
16 *Reddick*, 157 F.3d at 720-21.

17 **B. Sequential Evaluation Process**

18 To be eligible for Social Security disability benefits, a claimant must show an
19 “inability to engage in any substantial gainful activity by reason of any medically
20 determinable physical or mental impairment which can be expected to result in death or
21 which has lasted or can be expected to last for a continuous period of not less than 12
22 months.” 42 U.S.C. § 423(d)(1)(a); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.
23 1999). The claimant bears the initial burden of proving disability. 42 U.S.C. § 423(d)(5);
24 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). A five step procedure is used to
25 evaluate a disability claim:

26 In step one, the Secretary determines whether a claimant is currently engaged

1 in substantial gainful activity. If so, the claimant is not disabled. 20 C.F.R. §
2 404.1520(b). In step two, the Secretary determines whether the claimant has
3 a “medically severe impairment or combination of impairments,” as defined
4 in 20 C.F.R. § 404.1520(c). If the answer is no, the claimant is not disabled.
5 If the answer is yes, the Secretary proceeds to step three and determines
6 whether the impairment meets or equals a “listed” impairment that the
7 Secretary has acknowledged to be so severe as to preclude substantial gainful
8 activity. 20 C.F.R. § 404.1520(d). If this requirement is met, the claimant is
conclusively presumed disabled; if not, the Secretary proceeds to step four. At
step four, the Secretary determines whether the claimant can perform “past
relevant work.” 20 C.F.R. § 404.1520(e). If the claimant can perform such
work, she is not disabled. If the claimant meets the burden of establishing an
inability to perform prior work, the Secretary must show, at step five, that the
claimant can perform other substantial gainful work that exists in the national
economy. 20 C.F.R. § 404.1520(f).

9 *Reddick*, 157 F.3d at 721.

10 **III. ALJ Decision**

11 Applying the five-step procedure in this case, the ALJ determined Plaintiff has not
12 engaged in substantial gainful activity since March 20, 2007, the alleged onset date of her
13 disabling condition. (AR 17) The ALJ found Plaintiff has the following “severe” impairments
14 within the meaning of the regulations: fibromyalgia, degenerative disc disease of L4-L5,
15 asthma, and depression. (*Id.*) The ALJ determined, however, that Plaintiff does not have an
16 impairment or combination of impairments that meets or medically equals a “listed”
17 impairment.² (*Id.*) As a result, the ALJ assessed Plaintiff’s residual functional capacity³
18 (“RFC”). (AR 19-22) The ALJ determined Plaintiff has the RFC to perform a range of
19 sedentary to light work as defined in 20 C.F.R. § 404.1567(a), (b) and § 416.967(a), (b). (AR

21 ² On this issue, the ALJ stated, “The record does not support the existence of any
22 functional limitations and or diagnostic test results that would suggest that the severity of the
23 impairments meet or equal the criteria of any specific listing. In addition, no treating or
24 examining physician has reported findings that either meet or are equivalent in severity to
the criteria of any listed impairment, nor are such findings indicated or suggested by the
medical evidence of record.” (AR 18)

25 ³ The term “residual functional capacity” means the most an individual can do after
26 considering the effects of physical and/or mental limitations that affect the ability to perform
work-related tasks. *See* 20 C.F.R § 404.1545(a)(1-2).

1 19) He found Plaintiff is able to frequently lift eight to ten pounds and occasionally lift
2 fifteen to twenty pounds; sit at least thirty minutes at a time; stand at least ten to fifteen
3 minutes at a time; and walk for one block at a time. (*Id.*) The ALJ further found Plaintiff
4 requires a job that permits “the sit/stand option throughout an 8-hour workday with
5 customary breaks,” and does not require bending, twisting and stooping, among other
6 limitations. (*Id.*)

7 In addition, the ALJ determined Plaintiff is capable of performing her past relevant
8 work in telephone sales, a job that utilizes the sit/stand option. (AR 22) He further found
9 there are other jobs existing in the national economy Plaintiff can perform, including parking
10 lot cashier and paramutual ticket seller. (AR 22-23) Based on these findings, the ALJ
11 concluded Plaintiff has not been under a “disability,” as defined in the Social Security Act,
12 from the alleged date of onset through the date of the ALJ’s decision. (AR 24)
13 Consequently, the ALJ ruled Plaintiff is not entitled to disability insurance benefits or
14 supplemental security income. (*Id.*)

15 **IV. Analysis**

16 Plaintiff contends in her opening brief the Commissioner’s decision should be
17 reversed and the case remanded for an award of benefits. Plaintiff argues the ALJ erred by
18 purporting to rely on the opinion of a non-examining state agency reviewing psychologist,
19 when the examining psychologist’s opinion, on which the ALJ also claimed to rely,
20 established disabling limitations. Plaintiff also argues the ALJ erred by rejecting Plaintiff’s
21 symptom testimony in the absence of clear and convincing reasons for doing so. In the
22 responsive brief, Defendant disputes each of Plaintiff’s arguments and contends the
23 administrative decision is supported by substantial evidence and free of harmful legal error.

24 **A. Alleged Error in Relying on Non-Examining State Agency Reviewer**

25 Plaintiff argues that even though the ALJ stated he gave “great weight” to the
26 examining psychologist’s assessment, he failed to consider the assessment as a whole, which
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1 indicates Plaintiff would have difficulty performing certain activities without interruptions
2 from psychologically based symptoms. Plaintiff contends the non-examining state agency
3 reviewer’s opinion, to which the ALJ also assigned “great weight,” is inconsistent with the
4 examining psychologists’s assessment in that it states Plaintiff would be able to perform
5 those activities without any stated difficulties. Plaintiff argues the ALJ erred by improperly
6 relying on the non-examining psychologist’s opinion and failing to fully consider the
7 examining psychologist’s assessment.

8 The medical opinions of three types of medical sources are recognized in Social
9 Security cases: “(1) those who treat the claimant (treating physicians); (2) those who examine
10 but do not treat the claimant (examining physicians); and (3) those who neither examine nor
11 treat the claimant (non-examining physicians).” *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
12 1996). Examining physicians’ opinions carry more weight than those of non-examining
13 physicians. *Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th Cir. 2001); 20 C.F.R. §
14 404.1527(c)(1). An examining physician’s uncontradicted opinion may be rejected only for
15 clear and convincing reasons supported by substantial evidence in the record. *Lester*, 81 F.3d
16 at 830-31. Even if the examining physician’s opinion is contradicted, an ALJ may not reject
17 an examining physician’s opinion without setting forth “specific and legitimate reasons”
18 supported by substantial evidence in the record. *Id.* The opinion of a non-examining
19 physician is not a specific and legitimate reason for rejecting an examining physician’s
20 opinion. *Id.* at 831. The ALJ is responsible for resolving conflicts in medical testimony.
21 *Thomas v. Barnhart*, 278 F.3d 947, 956-57 (9th Cir. 2002); *Meanel v. Apfel*, 172 F.3d 1111,
22 1113 (9th Cir. 1999); *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

23 **1. Examining Psychologist**

24 Clinical Psychologist, Melissa L. Finch, Ph.D., examined Plaintiff on June 28, 2008
25 and prepared a Psychological Report along with a Psychological/Psychiatric Medical Source
26 Statement. (AR 462-466) In the Medical Source Statement, Dr. Finch found Plaintiff does
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1 not appear to have impairment in “understanding and memory.” (AR 465) Regarding
2 “sustained concentration and persistence,” Dr. Finch found no impairment in sustained
3 concentration but, based on information obtained during the clinical interview, found
4 Plaintiff “may have difficulty performing activities within a schedule, maintaining regular
5 attendance, and completing a normal workday and workweek without interruptions from
6 psychologically-based symptoms.” (*Id.*)

7 Dr. Finch next addressed “social interaction” and found Plaintiff appears to have mild
8 impairment. (*Id.*) She concluded Plaintiff “may have difficulty working in coordination with
9 or proximity to others without being distracted by them; interacting appropriately with the
10 general public; and getting along with coworkers or peers without distracting them or
11 exhibiting behavioral extremes.” (*Id.*) Lastly, regarding “adaptation,” Dr. Finch found “no
12 evidence to indicate that [Plaintiff] would have any difficulty adapting to new or unfamiliar
13 situations or environments.” (*Id.*)

14 The ALJ summarized Dr. Finch’s psychological evaluation as follows:

15 Dr. Finch noted the claimant was cooperative and appeared to put forth good
16 effort. During the mental status exam, the claimant’s attention, memory and
17 concentration were adequate and she was able to perform simple instructions.
18 Her reasoning and judgment appeared to be intact. Her short-term and long-
19 term memory appeared unimpaired. Dr. Finch opined that the claimant does
20 not have an impairment in sustained concentration, comprehension or memory.
21 She believes the claimant has a mild impairment in social interactions and does
22 not believe the claimant would have any difficulty adapting to new or
23 unfamiliar situations. The undersigned gives Dr. Finch’s opinion great weight,
24 as it is consistent with the treatment records.

25 (AR 21)

26 **2. Non-Examining State Agency Reviewer**

27 Adrienne Gallucci, Psy.D., a non-examining reviewing psychologist, prepared a
Mental Residual Functional Capacity Assessment (“MRFCA”) and a Psychiatric Review
Technique on August 11, 2008. (AR 467-484) Of the twenty mental activities evaluated on
the MRFCA, Dr. Gallucci found “no evidence of limitation” in Plaintiff’s ability to do seven
of them and “not significantly limited” in her ability to do eight others. (AR 467-468). For

1 the remaining five activities, Dr. Garland found Plaintiff “moderately limited.” (*Id.*) The most
2 severe assessment, “markedly limited,” was not checked by Dr. Gallucci for any of the
3 twenty mental activities, which included activities involving “understanding and memory,”
4 “sustained concentration and persistence,” “social interaction” and adaptation. (*Id.*)

5 In the “Functional Capacity Assessment” section of the MRFCA, Dr. Gallucci relied
6 on Dr. Finch’s findings. Dr. Gallucci wrote:

7 Dr. Finch indicates claimant is able to:

- 8 1. Remember work-like procedures/locations and understand and
9 remember both simple and detailed instructions.
- 10 2. Carry out both simple and detailed instructions, maintain attention and
11 concentration, maintain regular attendance and be punctual within
12 customary tolerances, sustain an ordinary routine without special
13 supervision, work in coordination with or proximity to others without
14 being unduly distracted by them, make simple work-related decisions,
15 and complete a normal workday and workweek without interruptions
16 from psychologically based symptoms and perform at a consistent pace
17 without an unreasonable number and length of rest periods.
- 18 3. Ask simple questions or request assistance, accept instructions and
19 respond appropriately to criticism from supervisors, and get along with
20 coworkers or peers without distracting them or exhibiting behavioral
21 extremes.
- 22 4. Respond appropriately to changes in a routine work setting, be aware
23 of normal hazards and take appropriate precautions, use public
24 transportation, set goals and make plans.

25 (AR 469)

26 In the Psychiatric Review Technique, Dr. Gallucci found Plaintiff’s activities of daily
27 living are mildly restricted; Plaintiff has moderate difficulties in maintaining social
functioning; she has moderate difficulties in maintaining concentration, persistence or pace;
and there have been no episodes of decompensation of extended duration. (AR 481) After
summarizing the MRFCA and the Psychiatric Review Technique, the ALJ gave “great
weight” to Dr. Gallucci’s opinions, finding they are consistent with treatment records and the
records as a whole. (AR 22)

1 **3. Discussion**

2 As noted above, Plaintiff claims the opinions by the two psychologists are “at odds”
3 and the ALJ erred by relying on Dr. Gallucci’s opinions and failing to fully consider the
4 limitations set forth in Dr. Finch’s assessment. (Doc. 23 at 16) Specifically, Plaintiff
5 contends the ALJ failed to consider that Dr. Finch opined Plaintiff “may have difficulty
6 performing activities within a schedule, maintaining regular attendance and completing a
7 normal workday and workweek without interruptions from psychologically based
8 symptoms.” (*Id.*) Plaintiff contends Dr. Gallucci, in summarizing Dr. Finch’s assessment,
9 inaccurately indicated Plaintiff would be able to perform these activities without any stated
10 difficulties. Plaintiff argues the ALJ should not have relied on Dr. Gallucci’s inaccurate
11 findings. Defendant argues in response that contrary to Plaintiff’s contention, the
12 psychologists’ opinions are not “at odds” and the ALJ properly considered both in
13 determining Plaintiff’s RFC. (Doc. 24 at 5-7)

14 The Court agrees with Defendant that the psychologists’ opinions are not inconsistent.
15 Although Dr. Finch stated in her Medical Source Statement that Plaintiff “may have
16 difficulty” with certain activities, nowhere did she say Plaintiff would be unable to perform
17 those activities nor did Dr. Finch specifically identify Plaintiff’s ability to perform those
18 activities as “markedly” or “moderately” limited.

19 Relying on Dr. Finch’s Psychological Report and Medical Source Statement, Dr.
20 Gallucci essentially attempted to translate Dr. Finch’s language into the language and format
21 of the MRFCAs and the Psychiatric Review Technique. Thus, for each of the activities Dr.
22 Finch found Plaintiff “may have difficulty” performing, Dr. Gallucci checked the box for
23 “moderately limited” on the MRFCAs form. (*Compare* AR 465 with AR 467-468) Similarly,
24 absent any statement to the contrary by Dr. Finch, Dr. Gallucci stated Plaintiff “is able to”
25 perform those and other activities. (*Compare* AR 465 with AR 469)

26 Based on the foregoing, the Court finds Plaintiff has failed to demonstrate that Dr.
27 Gallucci’s interpretations of Dr. Finch’s opinions are unreasonable to the degree that Dr.

1 Gallucci's opinions should be disregarded. Although the ALJ does not specifically explain
2 his basis for determining the psychologists' opinions are consistent with one another to which
3 he assigned both "great weight," based on the above analysis, the Court finds the ALJ's
4 determination was a reasonable one. The Court finds no error in the ALJ's reliance on both
5 Dr. Gallucci's and Dr. Finch's opinions regarding Plaintiff's mental limitations pertaining
6 to work.

7 Plaintiff contends the ALJ also erred by ignoring Dr. Finch's global assessment of
8 functioning ("GAF") score. (Doc. 23 at 18) In the Psychological Report prepared by Dr.
9 Finch, she assigned Plaintiff a GAF score of 42. (AR 464) Citing the *Diagnostic and*
10 *Statistical Manual of Mental Disorders* at 34, Plaintiff asserts "[a] GAF score below 50
11 indicates serious impairment, including inability to keep a job." (Doc. 23 at 18)

12 Defendant argues in response that the ALJ discussed Plaintiff's GAF, stating she
13 consistently had GAF near 65 as reflected in treatment records. (Doc. 24 at 6-7) Defendant
14 contends the ALJ did not err by failing to rely on Dr. Finch's GAF score.

15 Regarding Plaintiff's GAF, the ALJ stated:

16 Mental health records show the claimant's global assessment of functioning
17 (GAF) scores have consistently been near 65 (Exhibit 26F). A GAF in this
18 range denotes some mild symptoms, but generally functioning pretty well, in
19 addition to maintaining some meaningful interpersonal relationships.

20 (AR 20) The exhibit cited by the ALJ contains 93 pages of Plaintiff's Psychiatric Progress
21 Notes from Phoenix Interfaith Counseling. (AR 609-701) The records show Plaintiff's GAF
22 score was assessed eight times between October 14, 2008 and June 22, 2010. (AR 610, 620,
23 634, 643, 664, 674, 685 and 698) On six occasions, her GAF score was 65. There was one
24 score of 52 in January 2010 and another score of 60 in April 2010. (*Id.*)

25 The Court finds Plaintiff has failed to show it was error for the ALJ to rely on
26 Plaintiff's GAF scores from her treatment records rather than the one GAF score from Dr.
27 Finch, which predated the treatment records. Plaintiff cites to no authority, and the Court is
aware of none, requiring the ALJ to adopt every finding in an examining psychologist's

1 opinion to which he has assigned “great weight.” The Court finds nothing improper about
2 the ALJ’s reliance on Plaintiff’s GAF scores in two years of treatment notes as opposed to
3 relying on Dr. Finch’s one-time assessment that took place prior to Plaintiff’s mental health
4 treatment.

5 As noted above, the ALJ is responsible for resolving conflicts in medical testimony.
6 *Thomas*, 278 F.3d at 956-57. To the extent Dr. Finch’s GAF score in June 2008 conflicts
7 with Plaintiff’s mental health treatment provider’s GAF scores from October 2008 to June
8 2010, the ALJ reasonably resolved the conflict by relying on the more recent scores over a
9 longer period of time. The Court finds no error in this conclusion.

10 **B. Discounting of Plaintiff’s Symptom Testimony**

11 Plaintiff next argues the ALJ erred by rejecting Plaintiff’s symptom testimony without
12 providing clear and convincing reasons for doing so. (Doc. 23 at 19-24) Plaintiff contends
13 that because the ALJ made no finding of malingering, he may not reject such testimony
14 without satisfying this high standard. Defendant argues in response that the ALJ provided
15 legally sufficient reasons for finding Plaintiff’s symptom testimony not credible. (Doc. 24
16 at 8-14)

17 An ALJ must perform a two-step analysis when determining whether a claimant’s
18 testimony regarding subjective pain or symptoms is credible. *Lingenfelter v. Astrue*, 504 F.3d
19 1028, 1035-1036 (9th Cir. 2007). “First, the ALJ must determine whether the claimant has
20 presented objective medical evidence of an underlying impairment ‘which could reasonably
21 be expected to produce the pain or other symptoms alleged.’” *Id.* at 1036 (quoting *Bunnell*
22 *v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991) (*en banc*). The claimant need only show that
23 her medically determinable impairment could reasonably be expected to produce some
24 degree of the symptom alleged, not “that her impairment could reasonably be expected to
25 cause the severity of the symptom she has alleged.” *Smolen v. Chater*, 80 F.3d 1273, 1282
26 (9th Cir. 1996). Second, if the claimant satisfies this test, and absent any evidence of
27 malingering, “the ALJ can reject the claimant’s testimony about the severity of her symptoms

1 only by offering specific, clear and convincing reasons for doing so.” *Id.* at 1281.

2 Further, to determine whether a claimant’s testimony regarding the severity of her
3 symptoms is credible, an ALJ may consider the following: “(1) ordinary techniques of
4 credibility evaluation, such as the claimant’s reputation for lying, prior inconsistent
5 statements concerning the symptoms, and other testimony by the claimant that appears less
6 than candid; (2) unexplained or inadequately explained failure to seek treatment or to follow
7 a prescribed course of treatment; and (3) the claimant’s daily activities.” *Smolen*, 80 F.3d at
8 1284. An ALJ may also consider the claimant’s work record, and the observations of treating
9 and examining physicians and other third parties regarding “the nature, onset, duration and
10 frequency of claimant’s symptoms, and precipitating and aggravating factors, functional
11 restrictions caused by the symptoms, and the claimant’s daily activities.” *Id.*

12 Here, the ALJ found “that the claimant’s medically determinable impairments could
13 reasonably be expected to cause the alleged symptoms; however, the claimant’s statements
14 concerning the intensity, persistence and limiting effects of these symptoms are not credible
15 to the extent they are inconsistent with the above residual functional capacity assessment.”

16 (AR 21) The ALJ further noted the following regarding Plaintiff’s credibility:

17 The claimant does not appear to be as limited as she alleges, as her treating
18 physicians have made notes of her physical and mental abilities. In July 2007,
19 one of the claimant’s physicians observed she was able to get up from a low
20 stool as well as squat down to get up without supporting herself with her hands
21 (Exhibit 29F). Visits with her primary care physician in March, April and July
22 2010 proved the claimant was able to get up and sit down without using the
23 arm of a chair and no reduced range of motion was observed (Exhibit 32F).
24 Records also indicate the claimant goes on outings with individuals from her
25 pain management group, as often as weekly (Exhibit 26F). Furthermore, the
26 claimant started homeschooling her daughter around November 2009 (Exhibit
27 26F). In addition, the claimant’s mental health records show several times the
claimant has reported, “doing well emotionally” (Exhibit 26F page 2, 36).
Although the claimant regularly uses a cane, an assistive device has never been
prescribed to the claimant. This information leads one to believe the claimant
is not as limited, physically or mentally, as she has alleged. This information
also lessens the claimant’s credibility.

(AR 20)

Among other limitations, Plaintiff testified at the hearing before the ALJ that she can

1 only lift three pounds with her right hand and six pounds with her left hand. (AR 48-49) She
2 testified she can only sit for seven to ten minutes and stand for ten or fifteen minutes. (AR
3 49) Plaintiff said she can only walk a block before needing to stop. (AR 49-50) She further
4 testified that on a typical day, during normal working hours of nine to five, she spends six
5 of those eight hours lying down to get relief from her symptoms. (AR 55)

6 As noted above, by finding Plaintiff's medically determinable impairments could
7 reasonably be expected to cause the alleged symptoms, and due to the absence of evidence
8 of malingering, the ALJ was required to provide clear and convincing reasons for discounting
9 Plaintiff's symptom testimony. *See Smolen*, 80 F.3d 1281. The Court finds the ALJ's reasons
10 for rejecting Plaintiff's symptom testimony meet that standard. The ALJ cited specific
11 treatment records suggesting Plaintiff is stronger and more mobile than her hearing testimony
12 indicated. The ALJ identified information in the record regarding Plaintiff's activities,
13 including weekly outings and homeschooling her daughter, that suggest her activity level is
14 greater than her testimony claimed. Even if the evidence regarding Plaintiff's participation
15 in such activities is somewhat equivocal, the ALJ properly considered those activities in
16 finding Plaintiff's subjective complaints were not credible to the extent claimed. *See Rollins*
17 *v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (stating that "[i]t is true that [the claimant's]
18 testimony was somewhat equivocal about how regularly she was able to keep up with all of
19 these activities, and the ALJ's interpretation of her testimony may not be the only reasonable
20 one. But it is still a reasonable interpretation and is supported by substantial evidence; thus,
21 it is not our role to second guess it."). Additionally, the ALJ cited specific examples from
22 Plaintiff's mental health treatment records that indicate her mental health limitations are not
23 as debilitating as she claims. The Court finds the ALJ's reasons for discounting Plaintiff's
24 symptom testimony satisfy the clear and convincing standard. The Court, therefore, finds no
25 error.

26 **V. Conclusion**

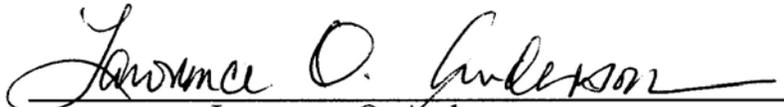
27 Based on the foregoing analysis, the Court finds the Commissioner's decision is

1 supported by substantial evidence and is free from harmful legal error.

2 Accordingly,

3 **IT IS ORDERED** that the decision of the Commissioner is **AFFIRMED**. The Clerk
4 of Court is directed to enter judgment accordingly and terminate this appeal.

5 Dated this 23rd day of September, 2013.

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8 Lawrence O. Anderson
9 United States Magistrate Judge
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